

REMARKS

Claims

Claims 1–15 were originally presented for examination. Claims 16 and 17 are added by this paper.

Claim amendments

The claims have been amended to use language in accordance with conventional US practice.

The cancelled subject matter of claims 2 and 8 is now recited in new claims 16 and 17, respectively.

Claim 10 has been amended to remove multiple dependencies. Claim 15 has been converted into a process claim.

Claims 13 and 14 are directed to assay techniques that are commensurate with Applicants' claimed invention. Support for the amendment of claims 13–14 can be found in, for example, 1st and 2nd paragraphs at page 20 of the instant specification, as originally filed and the disclosure contained in Examples.

It is submitted that the claim amendments do not add new matter.

Restriction/election

In response to the Restriction Requirement dated June 25, 2007, Applicants hereby elect, with traverse, Group I (claims 1-5 and 9–10), drawn to a polynucleotide which encodes a kinase polypeptide, pharmaceutical composition(s) and/or kit(s) thereof.

It is earnestly submitted that the election of species requirement, which the Office Action imposes on the allegedly distinct invention(s) of Group III–V, is rendered moot by Applicants' timely election of Group I.

Withdrawal of this restriction requirement is respectfully requested. At page 3 of the outstanding Office Action, the Examiner referred to Trotter (1999) as the basis for her conclusion that the claims do not relate to single general inventive concept. However, no explanation was provided, and moreover, the Office Action does not provide scientific evidence as to how Trotter et al. teach and/or suggest the kinase polypeptide of the instant invention.

Applicants respectfully submit that the entirety of the present claims possess unity of invention under 37 C.F.R. §1.499. The claims in the instant application involve related subject matter, for example, a polynucleotide which encodes a kinase polypeptide, as recited in Applicants' elected Group I. All the claims would comprise overlapping subject matter and it would not be an undue burden on the Examiner to carry out a search. "If search and examination of an entire application can be made without serious burden, the Examiner *must* examine it on the merits, even though it includes claims to independent or distinct invention." (Emphasis added.) See, M.P.E.P. §803. Accordingly, it is respectfully submitted that the restriction be withdrawn.

At a minimum, the restriction requirement should be modified to combine Groups IV and V (claims 11–15), drawn to a method of using the elected compound(s) and/or composition(s). "If a product claim is found allowable, process claims that depend from or otherwise require all the limitations of the patentable product may be rejoined." See M.P.E.P. § 806.05. Therefore, a modification to the existing restriction requirement is respectfully requested.

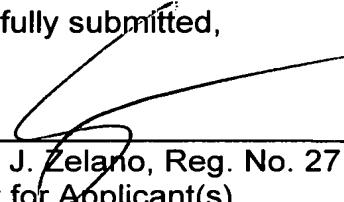
For all of the above reasons, it is urged that the restriction requirement should be withdrawn. Favorable action is earnestly solicited.

Should the Restriction Requirement still be maintained, Applicants will seek reentry of any withdrawn claims once allowable subject matter has been determined. See, for example, M.P.E.P. §821.04, "Rejoinder."

If there are any remaining issues which can be expedited by a telephone conference, the Examiner is courteously invited to telephone counsel at the number indicated below.

No fees are believed to be due with this response; however, the Commissioner is hereby authorized to charge any fees associated with this response to Deposit Account No. 13-3402.

Respectfully submitted,



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